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Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

CONRAD GOROSPE; SHIRLEY GOROSPE, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

A. Lavar Taylor
Counsel of Record
ROBERT S. HORWITZ
6 Hutton Centre Dr #880
Santa Ana, CA 92707
(714) 546-0445

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 393-4141 ♦ USSCINFO.COM

QUESTION PRESENTED

Whether the United States Tax Court has jurisdiction to review a determination issued by the Internal Revenue Service Office of Appeals under 26 USC §6330(d) prior to October 17, 2006 where the determination relates to an unpaid Trust Fund Recovery Penalty assessed under 26 U.S.C. §6672.

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OPINIONS BELOW

The Opinion of the Ninth Circuit Court of Appeals (App., *infra*, 1a) is reported at 446 F.3d 1014 (9th Cir. 2006). The opinion of the Tax Court (App., *infra*, 11a) is unreported. The Determinations by the IRS Office of Appeals (App., *infra*, 15a-20a) are unreported.

JURISDICTION

The Opinion of the Ninth Circuit Court of Appeals was issued on May 3, 2006. An Amended Opinion was issued on June 21, 2006. A Petition for Rehearing with Suggestion for Rehearing En Banc was filed on June 16, 2006 and was denied on August 14, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

26 U.S.C. §6330(d)(1), as in effect at the time this case was filed in the Tax Court, provides as follows:

> JUDICIAL REVIEW OF DETERMINATION– The person may, within 30 days of a determination under this section, appeal such determination–
>
> (A) To the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or
>
> (B) If the Tax Court does not have jurisdiction of the underlying tax liability, to a District Court of the United States.

If the court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

STATEMENT

This case involves the scope of the jurisdiction of the United States Tax Court to review "determinations" issued by Internal Revenue Service's Office of Appeals in connection with administrative appeals brought by taxpayers during the tax collection process under 26 U.S.C. §§6320 and 6330 (commonly referred to as Collection Due Process appeals or "CDP appeals").

1. Sections 6320 and 6330 of the Internal Revenue Code (26 U.S.C.) were enacted in 1998 as part of an effort to reform the Internal Revenue Service. Sections 6320 and 6330 became effective on January 19, 1999, pursuant to section 3406 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 746-750.

Under these two statutes, taxpayers have the opportunity to formally dispute a decision by the IRS to file a notice of federal tax lien against the taxpayer under 26 U.S.C. §6323 and to formally dispute a decision by the IRS to pursue levy action against the taxpayer under 26 U.S.C. §6331. When the IRS files a notice of federal tax lien against a taxpayer, the IRS sends a notice to the taxpayer of the filing of the lien notice. The taxpayer can request an "after the fact" administrative appeal before the IRS's Office of Appeals regarding the filing of lien notice. 26 U.S.C. §6320. Similarly, before the IRS takes levy action

against a taxpayer,[1] the IRS sends the taxpayer a notice of the IRS's proposed levy action. The taxpayer can request an administrative appeal of the proposed levy action with the IRS Office of Appeals. 26 U.S.C. §6330.

The procedures for the conducting of both types of administrative appeals are very similar. First, where there are multiple appeals by the same taxpayer, some arising under section 6320 and other arising under section 6330, the Office of Appeals must coordinate the related appeals to the extent practicable. 26 U.S.C. §6320(b)(4). The appeals must be handled by an impartial Appeals Officer. 26 U.S. C. §6330(b)(3). During the course of these administrative appeals, the taxpayers may raise "any relevant issue relating to the unpaid tax or the proposed levy," including: a) appropriate spousal defenses, b) challenges to the appropriateness of collection actions, and c) offers of collection alternatives, which may include the posting of a bond, the substitution of other assets, an installment agreement, or an offer in compromise. 26 U.S.C. §6330(c)(2)(A). Under certain circumstances, the taxpayer may challenge the merits of the underlying tax liability which is the subject of the filing of the notice of federal tax lien or of the proposed levy action. 26 U.S.C. §6330(c)(2)(B).

An administrative appeal before the IRS Office of Appeals concludes with a "determination" issued by that office. Such a "determination" must comply with

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[1]If the IRS determines that collection is in jeopardy, the IRS may take levy action without giving notice to the taxpayer. The taxpayer is still entitled to an administrative appeal after levy action has been taken.

certain requirements. 26 U.S.C. §6330(c)(3). A "determination" by the Office of Appeals is subject to judicial review. 26 U.S.C. §6330(d)(1).

The issue of the scope of the Tax Court's jurisdiction to review "determinations" by the IRS Office of Appeals in CDP cases has confused the lower courts, taxpayers and even the Department of Justice, due in significant part to the confusing nature of the statutory language in 26 U.S.C. §6330(d)(1). This confusion has culminated in a conflict between the Ninth Circuit's opinion in this case and the Eighth Circuit's opinion in *Robinette v. Commissioner*, 439 F.3d 455 (8th Cir. 2006).

2. The Internal Revenue Service ("IRS") issued a Notice of Intent to Levy to Petitioner Conrad Gorospe in 1999 indicating that the IRS intended to levy on Mr. Gorospe's property to collect two Trust Fund Recovery Penalty assessments made against Mr. Gorospe pursuant to 26 U.S.C. §6672. In response to this notice, Mr. Gorospe requested an administrative hearing pursuant to the Collection Due Process ("CDP") procedures in 26 U.S.C. §6330.

The Commissioner also filed two Notices of Federal Tax Lien against Conrad and Shirley Gorospe in 1999 for joint income tax liabilities for the years 1992-1994 and 1997 and sent notices of these filings to the Gorospes. These liabilities were based on "balance due" income tax liabilities which had been "self-assessed" by the Gorospes. In response to the notices, the Gorospes requested an administrative hearing pursuant to the CDP procedures set forth in 26 U.S.C §6320.

The IRS Office of Appeals assigned a single Appeals Officer to both administrative CDP appeals. The Appeals Officer conducted a single consolidated

hearing in both appeals pursuant to 26 U.S.C. §6320(b)(4). The Gorospes, in their appeals, sought to compromise their various tax liabilities through an offer in compromise. See 26 U.S.C. §7122. Alternatively, Mr. Gorospe argued that the assessments against him under 26 U.S.C. §6672 were not owed.

The Office of Appeals on July 12, 2002 issued multiple determinations in all of the CDP administrative appeals brought by the Gorospes. The determinations, which used nearly identical language, held that it was not appropriate for the IRS to enter into an offer in compromise with respect to the Gorospes and upheld the lien notice filings and proposed levy actions against the Gorospes. The Appeals Officer failed to address the issue of whether Conrad Gorospe was liable for the assessments against him under 26 U.S.C. §6672.

The Gorospes filed a single Tax Court petition challenging the determinations of the IRS Office of Appeals. The Tax Court dismissed for lack of jurisdiction the portion of the petition which challenged the determination relating to the Trust Fund Recovery Penalty assessments against Mr. Gorospe, while retaining jurisdiction over the determinations relating to the joint income tax liabilities. Mr. Gorospe sought to appeal the dismissal order to the Ninth Circuit Court of Appeals. The Ninth Circuit, in an unreported order, over the objections of both the Commissioner and Mr. Gorospe, dismissed the appeal for lack of jurisdiction, citing *Brookes v. Commissioner*, 163 F.3d 1124 (9th Cir. 1998).

After the Tax Court entered a final judgment on all causes of action before the Tax Court, the Gorospes once again appealed, arguing that the Tax Court had jurisdiction to review the determination regarding the

Trust Fund Recovery Penalty assessments. The Ninth Circuit held that the Tax Court lacked jurisdiction to review the determination involving the Trust Fund Recovery Penalty assessments.

REASONS FOR GRANTING THE PETITION

A. *Conflict Between the Courts of Appeal*

The opinion of the Ninth Circuit in this case is in direct conflict with the holding the of the Eighth Circuit on the issue of jurisdiction in the case of *Robinette v. Commissioner*, 439 F.3d 455 (8th Cir. 2006). In the present case the Ninth Circuit held as follows:

> [T]he Tax Court does not have plenary jurisdiction over appeals of CDP determinations. Rather, it has jurisdiction [to review CDP determinations] only where *it would have had jurisdiction to consider the underlying tax liability*. Where the Tax Court *would not have had jurisdiction over the underlying tax liability*, jurisdiction rests in the district courts. (citations and footnote omitted)(emphasis added)

446 F.3d at 968. The Ninth Circuit in the present case held that the Tax Court has jurisdiction to review "determinations" under §6330(d)(1) only where the Tax Court would otherwise have had jurisdiction to review the underlying liability. Because the Tax Court did not otherwise have jurisdiction to consider the merits of the underlying Trust Fund Recovery Penalty assessment against Mr. Gorospe, *see Henry Randolph Consulting v. Commissioner*, 112 T.C. 1 (1999), the Ninth Circuit held that the Tax Court lacks jurisdiction

to review the CDP determination by the Office of Appeals relating to the Trust Fund Recovery Penalty assessment against Mr. Gorospe.

In *Robinette*, the Tax Court exercised its jurisdiction to review a CDP determination by the Office of Appeals involving "balance due" income tax liabilities, i.e., taxes owed as a result of the taxpayers filing income tax returns without paying the amount shown due on the return. No notice of deficiency was issued to the taxpayers for the liabilities in question. 439 F.3d at 456-457. It is undisputed that the Tax Court, outside of the context of CDP cases, has jurisdiction only over income tax *deficiencies*. The Tax Court lacks jurisdiction to determine the correctness of taxes shown on a balance due return where no notice of deficiency has been issued to the taxpayer. 26 U.S.C. §6213(a), *Johnson v. Commissioner*, 52 T.C. 792 (1969), *aff'd*, 429 F.2d 804 (6th Cir. 1970), *Fendler v. Commissioner*, 441 F.2d 1101 (9th Cir. 1971), *see also* Saltzman, *IRS Practice and Procedure*, ¶ ¶1.06 and 1.07 (Revised 2nd Ed. 2005).

Thus, in the *Robinette* case, the Tax Court exercised jurisdiction over a "determination" involving a tax liability over which the Tax Court could have never otherwise exercised jurisdiction. The Eighth Circuit affirmed the Tax Court's exercise of jurisdiction. 439 F.3d at 458. This is in direct conflict with the Ninth Circuit's opinion in this case.

The Ninth Circuit's opinion in this case, in a footnote, 446 F3.d at 968, states that the Eighth Circuit's opinion in *Robinette* "supports" the Ninth Circuit's holding. This statement illustrate's the fundamental failure of the Ninth Circuit to understand the circumstances under which the Tax Court has jurisdiction over income tax liabilities in circumstances

other than CDP cases.

Not surprisingly, the Ninth Circuit's opinion in this case is also internally contradictory. This is because the joint income tax liabilities of the Gorospes which were the subject of the "determinations" over which the Tax Court did exercise jurisdiction in this case were "balance due" liabilities over which the Tax Court could have never exercised jurisdiction outside of the CDP context. Had the Ninth Circuit properly followed its own holding in this case, the Ninth Circuit, instead of affirming the judgment of the Tax Court, would have vacated that portion of the Tax Court's judgment which affirmed the "determinations" relating to the joint income tax liabilities of the Gorospes on the grounds that the Tax Court lacked jurisdiction to enter such a judgment. Instead, the Ninth Circuit affirmed the entire judgment of the Tax Court, a judgment which affirmed the determinations issued by Appeals with respect to the "balance due" income tax liabilities of the Gorospes.

The Tax Court is a court of nationwide jurisdiction. *Lawrence v. Commissioner*, 27 T.C. 713 (1957). In addition, the Tax Court, in deciding legal issues, follows the law of the Court of Appeals to which an appeal lies in each particular case, *Golsen v. Commissioner*, 54 T.C. 742 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971), a matter that is generally governed by the location of the taxpayer's legal residence or principal place of business. 26 U.S.C. §7482(b). Thus, the present split in the Circuits means that similarly situated taxpayer are being treated differently on the matter of the Tax Court's jurisdiction merely because they reside in different Circuits. Review by this Court will eliminate such inconsistent treatment.

B. *There Has Been Confusion Among the Lower Courts and Within the Department of Justice*

The internal inconsistencies in the Ninth Circuit's opinion, discussed above, well illustrate the confusion spawned by the poor job done by Congress in drafting section 6330(d)(1). One of the most significant problems with the statutory language is that section 6330(d)(1)(B) uses the *present tense* in discussing the reference to the Tax Court's jurisdiction over the underlying tax liability ("if the Tax Court does not have jurisdiction of the underlying tax liability, to a District Court of the United States"), instead of using the past tense. By the time a CDP appeal is filed, it is almost impossible for the Tax Court to "have" jurisdiction over the underlying tax liability.

Under 26 U.S.C. §§6212 and 6213, the Tax Court has jurisdiction to redetermine "deficiencies" in income taxes, gift and estate taxes and certain types of excise taxes after the IRS has asserted a deficiency in taxes in a document called a "notice of deficiency." Generally, a "deficiency" in taxes is an increase in the tax liability over and above the amount of taxes shown due on any return that has been filed by the taxpayer. 26 U.S.C. § 6211.

If the IRS has not issued a notice of deficiency to a taxpayer, the Tax Court lacks jurisdiction to determine the amount of taxes owed by a taxpayer. 26 U.S.C. §6213(a), *See, e.g., Johnson v. Commissioner*, 52 T.C. 792 (1969), *aff'd*, 429 F.2d 804 (6th Cir. 1970), *Fendler v. Commissioner*, 441 F.2d 1101 (9th Cir. 1971). Thus, if a taxpayer has filed a tax return without paying all of the taxes shown due on the return (a "balance due return"), the taxpayer can not challenge the amount of the liability shown due on the return in

the Tax Court. *Id.* Rather, the taxpayer must pay the tax shown due on the return and bring an action for refund of taxes in the district courts or the Court of Claims. *See Flora v. United States*, 362 U.S. 145 (1960).

In almost all circumstances, an audit, followed by the issuance of a notice of deficiency, precedes the assessment and collection of taxes to which the deficiency procedures apply. If the taxpayer disputes the IRS's determination of a deficiency in taxes by filing a petition with the Tax Court, resolution of the Tax Court case normally precedes the assessment and collection of the deficiency. *See* 26 U.S.C. §6213(a) (restricting the ability of the IRS to assess and collect deficiencies unless a Notice of Deficiency is issued to the taxpayer). The only exception to this rule is where the IRS has determined that collection of the deficiency is in jeopardy and has made a "termination assessment" or "jeopardy assessment" pursuant to 26 U.S.C. §§6851 or 6861. *See Commissioner v. Shapiro*, 424 U.S. 614 (1976). Thus, in almost all situations, the Tax Court no longer has jurisdiction to determine the amount of taxes owed by the taxpayer by the time the IRS has begun taking collection action against the taxpayer to collect a deficiency. By the time the IRS is taking collection action to collect a deficiency, normally one of three things has happened: a) the Tax Court has previously determined the amount of the deficiency, b) the taxpayer agreed in writing with the IRS that there was a deficiency, or c) the taxpayer failed to challenge the notice of deficiency in the Tax Court.

In addition, there are a host of additional taxes and penalties over which the Tax Court lacks jurisdiction to determine the merits of the liabilities, whether or not there is a dispute between the IRS and a taxpayer as to whether such taxes or penalties are

owed. For example, the Tax Court (outside the context of a CDP case) lacks jurisdiction to determine whether a person is liable for penalties assessed under 26 U.S.C. §6700 (penalties on tax shelter promoters), 26 U.S.C. §6694 (tax return preparer penalties), 26 U.S.C. §6672 (Trust Fund Recovery Penalty) as well as numerous other taxes and penalties. *See* Saltzman, *IRS Practice and Procedure*, ¶ ¶1.06 and 1.07 (Revised 2nd Ed. 2005).

By the time the IRS is taking collection action against a taxpayer such as the filing of a notice of federal tax lien or the issuance of a notice of intent to levy, the earliest points in time at which a CDP appeal can commence, the Tax Court will almost never "have" jurisdiction to determine the underlying liability, even if the liability which is the subject of collection action by IRS is one over which the Tax Court "would have had" jurisdiction at a prior time (because it involved a deficiency in income taxes, estate or gift taxes or certain excise taxes).

Subsection 6330(d0(1)(A), read by itself, grants the Tax Court plenary jurisdiction to review all "determinations" by the IRS's Office of Appeals. If subsection 6330(d)(1)(B) is interpreted as a limitation on the grant of plenary jurisdiction to the Tax Court under subsection 6330(d)(1)(A), then a literal reading of subsection 6330(d)(1)(B) means that the Tax Court has jurisdiction to review "determinations" by the Office of Appeals only where the IRS has done a jeopardy or termination assessment of a deficiency in the types of taxes over which the Tax Court has jurisdiction. Such a conclusion makes little sense. It is nonsensical for Congress to bestow plenary jurisdiction on the Tax Court in subsection 6330(d)(1)(A) and withdraw nearly all of that jurisdiction in subsection 6330(d)(1)(B).

Because such a "literal" reading of subsection 6330(d)(1)(B) makes no sense, courts have struggled with the meaning of this subsection. The Tax Court, in an early decision, held that it lacked jurisdiction to review a determination which related to income taxes which had been summarily assessed against the taxpayer pursuant to 26 U.S.C. §6213(b)(1), taxes which the Tax Court did not otherwise have jurisdiction to review. *Stephen C. Loadholt Trust v. Commissioner*, 80 T.C.M. (CCH) 675 (2000). Later, the Tax Court reversed its position and held that it has jurisdiction to review "determinations" involving "self-assessed" income taxes, taxes over which the Tax Court could not otherwise have exercised jurisdiction. *Landry v. Commissioner*, 116 T.C. 60 (2001), *Hoffman v. Commissioner*, 119 T.C. 140 (2002).

But the Tax Court has also held that it does not have jurisdiction to review determinations relating to other types of liabilities over which the Tax Court would not otherwise have exercised jurisdiction. *Johnson v. Commissioner*, 117 T.C. 204 (2001) (involving collection of penalty assessed under 26 U.S.C. §6702), *Moore v. Commissioner*, 114 T.C. 171 (2000)(involving collection of Trust Fund Recovery Penalty assessed under 26 U.S.C. §6672), *Service Employees International Union v. Commissioner*, 125 T.C. 63 (2005) (involving penalties assessed under 26 U.S.C. §6652(c)(1) for failure to file information returns).

A number of courts have defended or supported the Tax Court's inconsistent rulings by stating that the Tax Court deals with income taxes while the District Courts deal with other types of taxes such as employment taxes. *See, e.g., Marino v. Brown*, 357 F.3d 143, 146 (1st Cir. 2004), *Voelker v. Nolen*, 365 F.3d 580,

581 (7th Cir, 2004), neither of which involved the fact pattern presented in the present case and neither of which involved taxpayers represented by counsel. This approach is generally consistent with the regulations promulgated by the Secretary of the Treasury, which are discussed in greater detail below. Treas. Reg. §301.6330-1(f) (as in effect prior to November 16, 2006).

Such an approach, however, is both oversimplified and incorrect. As noted above, both the Tax Court and the district courts adjudicate disputes over income taxes in differing contexts. Generally, the Tax Court will deal with asserted income tax deficiencies, while the district courts deal with asserted overpayments of tax. *Compare Fendler v. Commissioner, supra, with Flora v. United States, supra.*

Similarly, both the Tax Court and the district courts can exercise jurisdiction over employment tax disputes in different contexts. The Tax Court has jurisdiction to determine whether workers are employees or independent contractors for purposes of the employment tax laws, 26 U.S.C. §7436, and has jurisdiction to review the IRS's denial of a request for abatement of interest on employment taxes under 26 U.S.C. §6404(e), *see Miller v. Commissioner*, 310 F.3d 640 (9th Cir. 2002), while district courts have refund jurisdiction to determine the amount of employment taxes owed by a taxpayer. *See Williams-Russell & Johnson, Inc. v. United States*, 371 F.3d 1350 (11th Cir. 2004), *cert. denied,* 543 U.S. 1022 (2004).

It is not a correct statement of the law that the Tax Court deals with income taxes while the district courts deal with employment taxes. Both the Tax Court and the district courts exercise jurisdiction over disputes involving income taxes and employment taxes.

Judge Beghe of the Tax Court, joined by Judge Halpern, dissented from the holding in *Johnson v. Commissioner*, 117 T.C. 204, *supra*, that the Tax Court lacked jurisdiction to review a "determination" relating to a liability over which the Tax Court would have otherwise lacked jurisdiction. Judge Beghe concluded that subsection 6330(d)(1)(A) bestows plenary jurisdiction on the Tax Court to review all "determinations" issued by the IRS Office of Appeals and that subsection 6330(d)(1)(B) bestows concurrent jurisdiction on the district courts to review "determinations" relating to liabilities over which the Tax Court would not otherwise exercise jurisdiction. 117 T.C. 204 (Beghe, J., dissenting). This is the same position advocated by the Gorospes in the present case.

In *ACT Restoration, Inc. v. United States*, 1999 U.S. Dist. LEXIS 16015 (N.D.Fla. 1999), the Department of Justice took the position that the Tax Court, and not the District Court, had jurisdiction to review a determination involving employment taxes. The District Court agreed with this position and dismissed the complaint, giving the taxpayer 30 days to seek review of the determination in the Tax Court. (The Court later vacated its order.) Thus, the Department of Justice Tax Division at one point publicly took the position that the Tax Court has plenary jurisdiction to review all "determinations" under subsection 6330(d)(1)(A), including those determinations involving employment taxes, and persuaded a District Court to take the same position.

One District Court has even held that District Courts have jurisdiction to review determinations involving penalties related to income taxes but that the Tax Court has exclusive jurisdiction to review determinations involving the interest on those taxes.

Dogwood Forest Rest Home, Inc. v. United States, 181 F.Supp.2d 554 (M.D.N.C. 2001).

All of this confusion reflects the poor manner in which subsection 6330(d)(1)(B) was drafted, confusion which has resulted in a split between Ninth Circuit and Seventh Circuit on the meaning of this statute. Thus, this Court's review of the present case is warranted.

C. *The Ninth Circuit's Opinion Is Nonsensical and Leads to Absurd Results*

The opinion of the Ninth Circuit in this case is nonsensical in light of the statutory language and the purpose of the statute as expressed by Congress. As noted at page 6 above, the Ninth Circuit concluded that the Tax Court has jurisdiction to review "determinations" under section 6330(d)(1) "only where it would have had jurisdiction to consider the underlying tax liability." 446 F.3d at 968. The literal language of section 6330(d)(1), however, is inconsistent with this quoted language. The language of subsection 6330(d)(1)(B) states that the District Courts have jurisdiction to review a determination "if the Tax Court does not *have* jurisdiction of the underlying liability." The statutory language uses the present tense, not the past tense, and the language of 6330(d)(1)(B) does not state that the jurisdiction of the district courts bestowed by that subsection is exclusive.

The only language that arguably supports a conclusion that the jurisdiction of the district courts under subsection 6330(d)(1)(B) is exclusive is the flush language at the end of section 6330(d)(1). This flush language allows a taxpayer who has sought review of a "determination" in the "wrong" court to refile the action in the "correct" court. It is possible, however, to

construe the flush language to apply only to filings in the district courts. Such a construction harmonizes the flush language with the broad grant of jurisdiction given to the Tax Court to review "determinations" in subsection 6330(d)(1)(A) and with the purpose of the statute as expressed in section 6320(b)(4)(which requires that related administrative CDP appeals be consolidated to the extent practicable). Given that some sort of departure from the literal language of section 6330(d)(1) is necessary to reach an interpretation of the statute that makes sense, such a construction of the statute makes significantly more sense than does the Ninth Circuit's construction of the statute.

The Ninth Circuit concluded that the language of the statute, if taken at "face value," compels the result it reached in its opinion. 446 F.3d at 968. Yet, in the same breath, the Ninth Circuit disregarded the very statutory language which it declares to be so clear if taken at "face value." The Ninth Circuit disregarded the literal language of the statute by rewriting the phrase "does not have jurisdiction of the underlying tax liability" to read "would have had jurisdiction over the underlying tax liability" and by inserting a word ("only") which appears nowhere in the statute to support its conclusion that the jurisdiction of the district courts under subsection 6330(d)(1)(B) is exclusive. The Ninth Circuit's purported reliance on the "plain language" of the statute is a logical fallacy.

This Court has held that statutes should be interpreted in a manner that avoids absurd results. *Clinton v. City of New York*, 524 U.S. 417 (1998). The Ninth Circuit's interpretation of section 6330(d)(1) yields absurd results. Under the Ninth Circuit's ruling, where an IRS Appeals Officer conducts consolidated

hearings under 26 U.S.C. §6320(b)(4) after the taxpayer has filed multiple administrative appeals involving different types of taxes, and the Appeals Officer thereafter issues multiple determinations to that one taxpayer at the conclusion of the consolidated hearings, that taxpayer is required to file two different complaints seeking judicial review of these multiple determinations in two different courts. Two different judges and two different sets of government attorneys must get involved, even though the two cases involve the same parties and a common set of facts. In this situation, there is a possibility of inconsistent rulings by the two different courts reviewing the common set of facts, and in some circumstances difficult issues of coordination between the two court actions can arise. No one, not the taxpayer, not the IRS, and certainly not the court system, benefits from such a result. Forcing a taxpayer who is financially unable to pay their tax liabilities to file two separate actions in two separate courts to seek judicial review of a common set of facts is truly absurd.

It makes far more sense to construe section 6330(d)(1) in a manner that permits a taxpayer to bring a single action in the Tax Court to review the multiple determinations by the IRS Office of Appeals. Such a result is consistent with the provision in 26 U.S.C. §6320(b)(4), which require that hearings in multiple administrative CDP appeals be held in conjunction with each other to the extent practicable. It makes no sense to consolidate multiple administrative appeals only to force more than one court to review the determinations made in those consolidated appeals.

D. *The Executive Branch Has Improperly Sought to Limit the Jurisdiction of the Federal Courts*

The regulations issued by the Secretary of the Treasury in connection with the version of section 6330(d)(1) which was in effect at the time the Gorospes filed their Tax Court petition, Treas. Reg. §301.6330-1(f) (as in effect prior to November 16, 2006), improperly seek to limit the scope of the jurisdiction of the Tax Court. The prior version of the Treasury regulations provided in relevant part as follows:

> Q-F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?
>
> A-F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Many of the courts which have addressed the scope of the Tax Court's jurisdiction to review "determinations" under section 6330(d)(1) have relied upon this regulation in support of rulings which limit the scope of the Tax Court's jurisdiction. *See Robinette v. Commissioner*, *supra*, 439 F.3d at 458, *Marino v. Brown*, *supra*, 357 F.3d at 145.[2] It is not proper for

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[2]The Ninth Circuit failed to discuss the applicable regulations in its opinion, notwithstanding the fact that the validity of these regulations was briefed by both the Gorospes and the

Federal courts to rely on the Executive Branch's Regulations, to which courts normally owe a degree of deference, *see Cottage Savings Ass'n v. Commissioner*, 499 U.S. 554, 560-61 (1991), in determining the scope of the federal courts' own jurisdiction. It is plainly the province of the Federal courts, not the Secretary of the Treasury, to determine the scope of the jurisdiction of the Federal courts as established by Congress. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

Attempts by the Executive Branch of the government to define and limit the scope of the jurisdiction of Federal courts by issuing regulations, such as the prior version of Treas. Reg. §301.6330-1(f), are dangerous. Allowing the Executive Branch of the government to define the scope of the jurisdiction of the Federal courts through the issuance of regulations will encourage the Executive Branch to attempt to narrow the scope of the jurisdiction of Federal courts through the issuance of regulations, in effort to avoid judicial review of the Executive Branch's own actions. This type of activity, if not checked by the Federal courts, could fundamentally alter the role of the Federal courts in our Constitutional scheme of government.

Commissioner. Perhaps this is because the Ninth Circuit's holding (the Tax Court has jurisdiction to review "determinations" only where "*it would have had jurisdiction to consider the underlying tax liability*") is inconsistent with the language in the regulations (the Tax Court has jurisdiction to review "determinations" if "*the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice*"). As noted above, the distinction which the regulations attempt to draw is nonsensical. Both the Tax Court and the district courts have jurisdiction over income taxes, and both have jurisdiction over employment tax matters, albeit in different contexts.

Improper efforts by the Secretary of the Treasury to limit the scope of the jurisdiction of Federal courts are not limited to the prior version of Treas Reg. §301.6330-1(f) . The regulations issued by the Secretary under section 6330, including Treas. Reg. §301.6330-1(f), were very recently amended. These amended regulations, which are effective for CDP requests made on or after November 16, 2006, Treas. Reg. §301.6330-1(j), T.D. 9291 (Oct. 16, 2006), purport to limit the jurisdiction of the Tax Court when it reviews "determinations." [3] These improper efforts by

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[3] The revised regulations read in relevant part as follows:

> Q-F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?
>
> A-F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

The Secretary's efforts to limit the jurisdiction of the Tax Court where a taxpayer "fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence" is very troubling. A taxpayer's failure to present evidence to Appeals in an administrative CDP appeal may be due to the fact that the taxpayer does not have such evidence in the taxpayer's possession and is unable to obtain such evidence. Given that taxpayers lack the ability to issue subpoenas to third parties in the context of administrative CDP appeals, *Davis v. Commissioner*, 115 T.C. 35 (2000), it is grossly unfair to establish a blanket rule that depri[illegible] the Tax Court of jurisdiction to review

the Executive Branch to limit the power of the Federal courts to determine the scope of its own jurisdiction as bestowed by Congress should be put to rest by this Court.

E. *Recent Legislation Amending Section 6330(d)(1) Demonstrates That Section 6330(d)(1), As in Effect When the Present Case Was Filed, Was Intended to Grant Plenary Jurisdiction on the Tax Court to Review All "Determinations" Issued by the Office of Appeals in CDP Cases*

On August 18, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780. Section 855 of this act, 120 Stat. 1019, amended 26 U.S.C. §6330(d)(1), effective with respect to "determinations" issued on or after October 17, 2006 (60 days after enactment), to read as follows:

> JUDICIAL REVIEW OF DETERMINATION.— The person may, within 30 days of a determination under this section, appeal such determination to the Tax Court (and the Tax Court shall jurisdiction with respect to such matter).

The language of newly amended section 6330(d)(1), as set forth above, undoubtedly grants the Tax Court

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an issue whenever a taxpayer is not in a position to present evidence to Appeals during the administrative CDP hearing. This is particularly so when the taxpayer is contesting the underlying tax liability. Furthermore, the question of whether the failure of the taxpayer to present evidence to Appeals during the administrative CDP hearing deprives the Tax Court of jurisdiction is a question that must be answered in the first instance by the Tax Court, not by the Secretary through the issuance of regulations.

plenary jurisdiction to review all determinations issued by the Office of Appeals, regardless of the nature of the underlying tax liability.

The language of newly amended section 6330(d)(1) is *identical* to the language used in the version of section 6330(d)(1)(A) which was in effect when the present case was filed in the Tax Court. This is a strong indication that the language used in the version of section 6330(d)(1)(A) which was in effect when the Gorospes filed their Tax Court petition in this case granted plenary jurisdiction to the Tax Court to review all "determinations" issued by the Office of Appeals, regardless of the nature of the underlying tax liability. This is so notwithstanding the fact that this Court has stated on more than one occasion that the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one. *United States v. Price*, 361 U.S. 304 (1960), *United States v. United Mine Workers*, 330 U.S. 258, 282 (1947).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

A. Lavar Taylor
Counsel of Record
ROBERT S. HORWITZ
6 Hutton Centre Dr #880
Santa Ana, CA 92707
(714) 546-0445

(any footnotes trail end of each document)

No. 04-73277

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONRAD GOROSPE; SHIRLEY GOROSPE,
Petitioners-Appellants,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee.

April 5, 2006, Argued and Submitted, Pasadena, California

June 21, 2006, Filed

COUNSEL: A. Lavar Taylor, Santa Ana, California, for the appellants.

Bridget M. Rowan, Anthony T. Sheehan, Johnathan S. Cohen, Eileen J. O'Connor, United States Department of Justice, Washington, D.C., for the appellee.

JUDGES: Before: Jerome Farris, Ferdinand F. Fernandez, and Sidney R. Thomas, Circuit Judges.

OPINION BY: Sidney R. Thomas

OPINION: AMENDED OPINION

THOMAS, Circuit Judge:

The appeal presents the question of whether the United States Tax Court has plenary jurisdiction to hear all appeals from collection due process ("CDP")

proceedings before the Internal Revenue Service ("IRS"). We reaffirm the principle that the Tax Court's jurisdiction over appeals from CDP determinations is limited to issues over which the Tax Court would have had jurisdiction to consider the underlying tax liability.

I

When a taxpayer fails to pay his federal taxes, after the IRS demands payment, the amount due becomes a "lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." 26 U.S.C. § 6321. The lien attaches immediately to the taxpayer's property, 26 U.S.C. § 6322, and becomes effective against certain third parties after the IRS has filed notice, 26 U.S.C. § 6323(f). The IRS may enforce the lien by levying the property of the delinquent taxpayer. 26 U.S.C. § 6331(a). The IRS must also notify a taxpayer before imposing a levy. 26 U.S.C. § 6331(d).

Once the IRS has notified a taxpayer of its intent to file a notice of lien or to impose a levy, the taxpayer has the right to a CDP hearing before the IRS Office of Appeals, and is entitled to raise defenses and to contest the levy or lien. 26 U.S.C. § 6330(c)(2)(A).[1] After receiving a determination from the IRS Office of Appeals, a taxpayer may seek judicial review, either in the Tax Court or in district court. 26 U.S.C. § 6330(d). This appeal concerns the boundaries of the Tax Court's jurisdiction in CDP appeals.

In 1999, the IRS sought liens against Dr. Conrad and Shirley Gorospe ("Taxpayers") to collect their 1992, 1993, 1994, and 1997 income taxes. It also sought a levy

against Dr. Gorospe to collect trust fund recovery penalties for taxes that he withheld from his employees' paychecks, but failed to pay to the government. The IRS sent Taxpayers CDP notices, and Taxpayers filed a timely request for a hearing before the IRS Office of Appeals.

In 2002, the IRS Office of Appeals sent Taxpayers three separate Notices of Determination. The first Notice sustained the lien based on Taxpayers' unpaid 1992-1994 income taxes. The second Notice sustained the lien based on Taxpayers' unpaid 1997 income taxes. The third Notice sustained the levy based on the trust fund recovery penalties that Dr. Gorospe owed.

Taxpayers appealed all three Determinations to the Tax Court. The IRS moved to dismiss the appeal of the trust fund recovery penalty determination, arguing that the Tax Court lacked subject matter jurisdiction over the underlying tax liability. The Tax Court agreed, and dismissed Taxpayers' appeal of the trust fund recovery penalty determination.

Taxpayers sought a Federal Rule of Civil Procedure 54(b) determination from the Tax Court, which was denied. Undaunted, they appealed the Tax Court's dismissal of the trust fund recovery penalty appeal to this court, and we dismissed for lack of appellate jurisdiction. Taxpayers then entered into a stipulation with the IRS, in which they admitted the validity of the income tax liens, and the Tax Court entered final judgment. Taxpayers again seek review of the Tax Court's dismissal of their trust fund recovery penalty determination appeal in this court. We review de novo the Tax Court's dismissal of an appeal for lack of

subject matter jurisdiction. *Estate of Branson v. Comm'r*, 264 F.3d 904, 908 (9th Cir. 2001).

II

The Tax Court is an Article I "court of limited jurisdiction and lacks general equitable powers." *Comm'r v. McCoy*, 484 U.S. 3, 7, 108 S. Ct. 217, 98 L. Ed. 2d 2 (1987) (per curiam). Its subject matter jurisdiction is statutorily granted by 26 U.S.C. § 7442, and is defined and limited by Title 26 of the United States Code. *Estate of Branson*, 264 F.3d at 908. Thus, we must consider whether Congress authorized the Tax Court to hear appeals of the IRS Office of Appeals's determinations in trust fund recovery penalty cases. The plain language of 26 U.S.C. § 6330(d) requires us to hold that Congress did not so intend.

We first "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. [Any] inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997) (internal quotation marks omitted).

26 U.S.C. § 6330(d) states:

(d) Proceeding after hearing.
(1) Judicial review of determination. The person may, within 30 days of a determination under this section, appeal such determination –

(A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or

(B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.

If a court determines that the appeal was to an incorrect court, a person shall have 30 days after the court determination to file such appeal with the correct court.

Taking this language at face value, it is apparent that the Tax Court does not have plenary jurisdiction over appeals of CDP determinations. Rather, it has jurisdiction only where it would have had jurisdiction to consider the underlying tax liability. Where the Tax Court would not have had jurisdiction over the underlying tax liability, jurisdiction rests in the district courts. *Moore v. Comm'r*, 114 T.C. 171, 175 (2000) ("[s]ection 6330(d)(1)(A) and (B) provides for Tax Court jurisdiction except where the Court does not normally have jurisdiction over the underlying liability.").[2]

The flush language at the end of § 6330(d), which modifies both § 6330(d)(1)(A) and § 6330(d)(1)(B) and explains what to do where an "appeal was to an incorrect court," mandates this conclusion. It provides that "the district court can determine that appeal should have been to [the Tax] Court, and [the Tax Court] can determine that appeal should have been to the district court." *Johnson v. Comm'r*, 117 T.C. 204, 211 (2001) (Vasquez, J, concurring). If the Tax Court has plenary jurisdiction, it would be impossible for an appeal in the Tax Court to have been taken to "an incorrect court," and the flush language at the end of § 6330(d) would have been written so as to apply only to cases in which a taxpayer attempts to invoke the

jurisdiction of the district courts.

The conclusion that the Tax Court lacks jurisdiction over CDP appeals where it would lack jurisdiction over the underlying tax liability is also supported by "the broader context of the statute as a whole." *Robinson*, 519 U.S. at 341. In other sections of the Tax Code, Congress explicitly provided for exclusive jurisdiction in the district courts, with limited concurrent jurisdiction in the Tax Court. *See, e.g.*, 26 U.S.C. § 7429(b)(2)(A) ("Except as provided in subparagraph (B), the district courts of the United States shall have exclusive jurisdiction over any civil action for a determination under this subsection."). Had Congress intended to enact a similar scheme in § 6330, it would have done so. *Johnson*, 117 T.C. at 212 (Vasquez, J, Concurring). Moreover, 26 U.S.C. § 6015(e)(1)(A) also states that "the individual may petition the Tax Court (and the Tax Court shall have jurisdiction)", but that provision has never been interpreted to give the Tax Court unlimited jurisdiction. *Johnson*, 117 T.C. at 212-13. We will not ascribe different meaning to the identical language in § 6015 and § 6330. Thus, if the Tax Court's jurisdiction is not plenary under § 6015(e)(1)(A), it cannot be plenary under § 6330(d)(1)(A), either.

Taxpayers argue that despite the clear language of § 6330 and the Tax Code as a whole, § 6330(d)(1)(A) grants plenary jurisdiction to the Tax Court to review CDP determinations, regardless of the tax liability upon which they are based. They dismiss the flush language following (d)(1)(B) because "the failure of Congress to use the phrase 'District Court' instead of 'a court' . . . must be viewed as an oversight." However, this argument ignores a fundamental precept of

statutory interpretation. We cannot dismiss the flush language as an "oversight" because "[i]f Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent. It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think . . . is the preferred result." *Lamie v. United States Trustee*, 540 U.S. 526, 542, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004).

Taxpayers also argue that a literal interpretation of § 6330 would strip the Tax Court of almost its entire grant of jurisdiction because the Tax Court has jurisdiction only over disputes concerning unassessed taxes. Because CDP hearings occur after taxes have been assessed, the argument goes, the Tax Court would never have jurisdiction over the "underlying tax liability." Taxpayers' argument proves too much: if the Tax Court would *never* have jurisdiction of the underlying tax liability, then the district court would *always* have concurrent jurisdiction, and the flush language after § 6330(d)(1)(B) would be superfluous. We will not interpret one provision of a statute so as to render another provision surplusage. *Freytag v. Comm'r*, 501 U.S. 868, 877, 111 S. Ct. 2631, 115 L. Ed. 2d 764 (1991) ("Our cases consistently have expressed a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment." (internal quotation marks omitted)).

Finally, Taxpayers argue that the more efficient interpretation of § 6330 would permit the Tax Court to hear appeals of trust fund recovery penalty determinations when those appeals are related to others properly before the Tax Court. However, the

plain language of the statute is clear, and we are bound by it, regardless of our own notions of judicial efficiency. The language of § 6330(d)(1)(A) does not suggest -- even slightly -- that the Tax Court has supplemental jurisdiction over CDP determinations involving trust fund recovery penalties when those determinations are related to other claims properly before the Tax Court. Though providing a single forum to resolve related tax disputes might be the more efficient approach, we are not legislators, and we must decline Taxpayers' invitation to write a supplemental jurisdiction statute similar to 28 U.S.C. § 1367 into the Tax Code. *See Lamie*, 540 U.S. at 542.[3]

III

Therefore, for these reasons, we must affirm the Tax Court's dismissal for lack of subject matter jurisdiction of Taxpayers' appeal of the trust fund recovery penalties determination.

AFFIRMED.

Footnotes

n1 Section 6320(c) looks to § 6330 for issues regarding hearings, review of decisions, and suspensions. Therefore, we discuss the procedural requirements as outlined in § 6330 in discussing both the liens and the levy.

n2 To the extent that out-of-circuit precedent is persuasive, we note that it overwhelmingly supports our interpretation of § 6330. *See, e.g., Robinette v. Comm'r*, 439 F.3d 455, 458 (8th Cir. 2006) ("The statute

also affords a right of judicial review of the determination by the impartial hearing officer, in either the Tax Court or a United States District Court, depending on whether the Tax Court has jurisdiction. *Id.* § 6330(d)(1)."); *Voelker v. Nolen*, 365 F.3d 580, 581 (7th Cir. 2004) (per curiam) ("The presumption is that review should be sought in the Tax Court, but in cases where the Tax Court lacks jurisdiction, the taxpayer may seek review in the district court."); *Marino v. Brown*, 357 F.3d 143, 146 (1st Cir. 2004) (per curiam) (finding that the Tax Court has exclusive jurisdiction over CDP determinations based on income tax liabilities and noting that the district court would have had jurisdiction had the determination involved employment tax liabilities); *Borges v. United States*, 317 F. Supp. 2d 1276, 1281 (D. N. M. 2004) ("Because the Tax Court does not have jurisdiction over employment tax liabilities, the district court is the proper court in which to seek review of an administrative determination regarding the assessment of employment taxes."); *Abu-Awad v. United States*, 294 F. Supp. 2d 879, 886-887 (S.D. Tx. 2003) ("Because the Tax Court does not have jurisdiction with respect to employment tax liability, the district court is the proper court in which to file a complaint contesting the assessment of employment taxes."). Taxpayers' arguments to the contrary, based on *Hoffman v. Comm'r*, 119 T.C. 140 (2002), *Landry v. Comm'r*, 116 T.C. 60 (2001), *Dogwood Forest Rest Home, Inc. v. United States*, 181 F. Supp. 2d 554 (M.D. N.C. 2001), and *ACT Restoration, Inc. v. United States*, 1999 U.S. Dist. LEXIS 16015 (N.D. Fla. 1999), do not withstand scrutiny.

n3 It is also worth noting that in this case, a holding that the Tax Court has jurisdiction to hear appeals of

CDP determinations involving trust fund recovery penalties would not aid Taxpayers in their quest for judicial efficiency. They stipulated with the IRS as to the validity of the determinations based on their failure to pay income taxes in 1992-1994 and 1997. Thus, the only issue remaining in their case concerns the trust fund recovery penalties.

3/19/04

UNITED STATES TAX COURT

Docket No. 13116-02 "L".

CONRAD & SHIRLEY GOROSPE,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ORDER AND DECISION

On March 15, 2004, this case was called from the calendar for the Trial Session of the Court at San Diego, California. There was no appearance by or on behalf of petitioners. Counsel for respondent appeared and filed with the Court a stipulation of settled issues and orally moved (respondent's oral motion) for entry of decision based on that stipulation.

After due consideration, and for cause appearing more fully in the transcript of the proceeding, it is

ORDERED that respondent's oral motion is granted. It is further

ORDERED and DECIDED that respondent may proceed with the collection action as determined in the Notice of Determination Concerning Collection Action dated July 12, 2002, with respect to petitioners' taxable years 1992, 1993, and 1994 and in the Notice of Determination Concerning

Collection Action dated July 12, 2002, with respect to petitioners' taxable year 1997.

11/27/2002
UNITED STATES TAX COURT
Docket No. 13116-0.2L.

CONRAD & SHIRLEY GOROSPE,
Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ORDER

On September 27, 2002, the Court filed respondent's Motion to Dismiss for Lack of Jurisdiction and to Strike as to Trust Fund Recovery Penalty Liability, in which respondent moved to dismiss for lack of jurisdiction the portion of petitioners' case relating to the trust fund recover penalty. Moore v. Commissioner, 114 T.C. 171 (2000)

Petitioners ask us to distinguish Moore. The present case involves the review of multiple, concurrent determinations by respondent under section 6330. This Court has jurisdiction over some of the determinations (i.e., income taxes and related additions to tax), but pursuant to Moore, lacks jurisdiction over the trust fund recovery penalty determination. Petitioners contend that, because section 6320 (b)(4) mandates that a hearing under section 6320 be combined with a hearing under section 6330 to the extent practicable, this Court may review all determinations pursuant to the 6330 hearing.

Upon consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction and to Strike as to Trust Fund Recovery Penalty Liability, filed on September 27, 2002, hereby is granted. It is further

ORDERED that petitioners have 30 days from the date of this order to file an appeal with the appropriate Federal District Court.

Date: July 12, 2002

NOTICE OF DETERMINATION CONCERNING COLLECTION ACTION UNDER SECTION 6320 OF THE INTERNAL REVENUE CODE

Dear Dr. & Mrs. Gorospe:

We have reviewed the proposed collection action for the period(s) shown above. This letter is your legal Notice of Determination, as required by law. A summary of our determination is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a Predetermination within 30 days from the date of this letter. To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217.

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file late. If the court determines that you made your petition to the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached pages(s).

If you have any questions, please call the person

whose name and telephone number are shown above.

Summary of Determination:

We are denying your appeal. We are sustaining the filing of the Federal Tax lien.

Date: July 12, 2002

NOTICE OF DETERMINATION CONCERNING COLLECTION ACTION UNDER SECTION 6320 OF THE INTERNAL REVENUE CODE

Dear Dr. & Mrs. Gorospe:

We have reviewed the proposed collection action for the period(s) shown above. This letter is your legal Notice of Determination, as required by law. A summary of our determination is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you must file a petition with the United States Tax Court for a Predetermination within 30 days from the date of this letter. To get a petition form and the rules for filing a petition, write to: Clerk, United States Tax Court, 400 Second Street, NW, Washington, D.C. 20217.

The time limit for filing your petition is fixed by law. The courts cannot consider your case if you file late. If the court determines that you made your petition to the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not petition the court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached pages(s).

If you have any questions, please call the person

whose name and telephone number are shown above.

Summary of Determination:

We are denying your appeal. We are sustaining the decision to take appropriate enforcement action.

Date: July 12, 2002

NOTICE OF DETERMINATION CONCERNING COLLECTION ACTION UNDER SECTION 6330 OF THE INTERNAL REVENUE CODE

Dear Dr. & Mrs. Gorospe:

We have reviewed the proposed collection action for the period(s) shown above. This letter is your legal Notice of Determination, as required by law. A summary of our determination is stated below and the enclosed statement shows, in detail, the matters we considered at your Appeals hearing and our conclusions.

If you want to dispute this determination in court, you have within 30 days from the date of this letter to file a complaint in the appropriate United States District Court for a redetermination.

The time limit for filing your complaint (30 days) is fixed by law. The courts cannot consider your appeal if you file late. If the court determines that you made your complaint to the wrong court, you will have 30 days after such determination to file with the correct court.

If you do not file a complaint within the 30 days from the date of this letter, court within the time frame provided by law, your case will be returned to the originating IRS office for action consistent with the determination summarized below and described on the attached pages(s).

If you have any questions, please Call the person whose name and telephone number are shown above.

Summary of Determination:

We are denying your appeal. We are sustaining the filing of the Federal Tax lien.

No. 04-73277

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CONRAD GOROSPE; SHIRLEY GOROSPE,
Petitioners-Appellants,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

8/14/2006

The panel has voted to deny the petition for rehearing. Judge Thomas votes to reject the petition for rehearing en banc and Judges Farris and Fernandez so recommend.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.